



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00/00AD/LSC/2014/0649

Property : 45 Kimberley Drive, Sidcup, Kent
DA14 4PP

Applicant : London & Quadrant Housing Trust
("the landlord")

Representative : Mr J Hardman – Counsel
(instructed by Housing Law
Services of London & Quadrant
Housing Trust)

Respondent : Ms J L Benson

Representative : In person

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Judge: Ms Haria
Professional Member: Mr Coffey
FRICS
Lay member: Ms Turner JP

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 21.12.2015

Date of Hearing : 22.04.2015

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Dartford County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years .
2. Proceedings were originally issued in the Northampton County Court under claim no. 3QTO6154. The claim was transferred to the Dartford County Court and then in turn transferred to this tribunal, by order of District Judge Glover on 10 December 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr J Hardman of Counsel at the hearing and the Respondent did not appear and was not represented. Also in attendance was Ms S Davy a team leader at London & Quadrant Housing Trust and Mr A Pickin Counsel's pupil.
5. The Respondent had sent an email to the tribunal the day before the hearing stating that she had not managed to collect the bundles sent by the Appellant from the post office and so she would not be attending the hearing.
6. The tribunal clerk contacted the Respondent to urge her to attend the hearing, and inform her that the tribunal would provide her with a bundle to use at the hearing. The Respondent was informed that the matter had been going on for some time, and that she would have had prior disclosure of all the documents in the bundle. The Respondent was informed that the tribunal would benefit from hearing from her and if she failed to attend, the tribunal may proceed to hear the case in her absence.
7. Mr Hardman informed the tribunal that the Respondent was sent the bundle by post with a covering letter dated 31 March 2015 and that on the 4 February 2015 the Applicant had disclosed all the documents to

the Respondent, with some additional copy invoices pertaining to the cleaning being sent to the Respondent on the or around the 9 or 10 February 2015. He informed the tribunal that apart from the Scott schedule produced by the Applicant summarising the issues the Respondent had seen all other documents included in the bundle. He stated that the Applicant would have been agreeable to an adjournment a few days prior to the hearing, had an application been made, but at this stage in the process it would be prejudicial to his clients for the hearing to be adjourned as they had incurred costs in instructing him to prepare for and attend the hearing.

8. The Tribunal noted that the Respondent had not attended the Case Management Conference held on the 15 January 2015 and the Applicant had disclosed the relevant documentation on the 4 February 2015. The Respondent had sent a fax detailing her complaints [128-137].
9. The Tribunal being satisfied that it was in the interests of justice to proceed with the hearing and having considered Rules 3 and 34 of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013 proceeded to hear the case.
10. During the course of the hearing it was apparent that the Applicant had not provided any explanation as to the mechanism used by the Applicant for apportioning the Estate Costs. This was particularly relevant to the issue raised by the Respondent in relation to the charges for the caretaker service.
11. During the course of the hearing Mr Hardman explained that the Applicant had not been able to produce certified accounts for all the years in dispute, he stated the Applicant is able to produce additional invoices to support the increase between the estimated service charge and the actual service charges.
12. At the end of the hearing the Tribunal considered it appropriate to allow the parties to make written submissions on the mechanism for apportioning the Estate costs and the reasons for any variation between the estimated service charge and the actual service charge and any additional invoices. Accordingly, the Tribunal issued further Direction on the 22 April 2015 for the Applicant to make written submissions on the matter and for the Respondent to reply.
13. The Tribunal reconvened on the 11 June 2015 without the parties to consider the further written submissions and to make a decision. Unfortunately the Tribunal was unable to make a decision as the Tribunal required further clarification on issues arising from the further submissions made on behalf of the Applicant. Accordingly, the Tribunal issued Further Directions on the 11 June 2015 and reconvened without the parties on the 9 October 2015 in order to make a decision

The background

14. The property which is the subject of this application is a two bedroom ground floor flat in a block of 6 flats with two flats on each floor. The property forms part of the Royal Park Estate which comprises a mixture of 247 houses and flats.
15. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
16. The Applicant is the freehold owner of the property and the Respondent's Landlord. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate. The Applicant's predecessor in title demised the property to the Respondent for a term of 125 years from 24 June 1988.
17. The lease is dated 24 June 1988 and made between The Mayor and Burgesses of the London Borough of Bexley Council (1) and Miss J Benson (2) ("the Lease").

The issues

18. At the start of the hearing Mr Hardman identified the relevant issue for determination to be the payability and the reasonableness of service charges for the service charge years 1st April 2006/07 to 1st April 2012/13 inclusive.
19. Mr Hardman confirmed that although the amount claimed in the County court claim was £4547.23, the sum specified in the in a witness statement of Ms Leah Macleod, leasehold income officer for the Applicant amounts to £3858.22. In addition the Applicant has conceded that the Respondent should not be charged for the cost of any window cleaning as the service had not been provided [126], this results in a refund of £68.91. Accordingly, the total amount now claimed from the Respondent is £3789.31 for the years in question.

The Lease

20. Clause 5(1) of the Lease contains covenants by the lessee to:

"The Lessee hereby covenants with the Council to contribute and pay on demand a fair and reasonable proportion of the costs of the Estate Services and such proportion as is specified in the Sixth Schedule hereof of the costs expenses outgoings and matters of the Building

Services referred to in Clause 4 hereof in respect of which the Council has incurred expenditure or a liability to pay such expenditure less any monies which the Lessee may have reimbursed the council for the insurance of the demised premises under Clause 1 hereof.....”

21. The Sixth Schedule refers to the proportion as provided in Paragraph 8 of the Particulars specified as 16%. Clause 4 sets out the Applicant’s extensive repairing obligations.

22. Clause 5(1) (f) sets out the Applicant’s power to make demands for service charge on account and provides as follows:

“Such sum or sums on account of any other costs expenses and outgoings which the Council shall have incurred at any time prior to the commencement of the relevant financial or shall anticipate incurring at any time after the end of the relevant financial year in respect of the above mentioned heads of expenditure as the Accountant (as hereinafter defined) may in his absolute discretion consider reasonable to include (whether by way of amortisation of costs expenses and outgoings already incurred or by way of provision for anticipated future costs expenses and outgoings) in the amount of the service charge for the relevant financial year so as to provide

(i) for the periodic recurring items such as outside painting and drain maintenance and

(ii) a reserve for structural repairs to the Building and the renewal improvement and modernisation of the plant and machinery therein which may become necessary from time to time these presents and

(iii) for such addition as he shall think necessary having regard to any deficiency in the amount estimated in respect of any item above mentioned in earlier years as compared with the actual costs incurred or respective liabilities.”

23. The mechanism for the recovery of the service charge is set out in Clause 5(3) – 5(7) of the Lease. Clause 5(4) permits the Applicant to make a demand for payment on account either quarterly or per month. Clause 5(6) provides that at the end of the financial year, the Applicant is to provide the lessee with an account of the actual service charge incurred *“.....together with a copy of the Accountant’s Certificate (with) due credit being given in such account for any interim payment made by the Lessee...”*

The Applicant’s Case

24. The Applicant relies on the witness statement of Sharon Davy who is employed by the Applicant as the Homeowners Income Team Leader and the Witness Statement of Leah Macleod who was employed by the Applicant as the Leasehold Income Officer until the 11 March 2015. Ms Davy attended the hearing and gave oral evidence in support of the Applicant's claim.
25. In addition the Applicant relies on the contents of the hearing bundle as well as the further written submissions made in response to the Tribunal's Directions.
26. Mr Hardman produced a Skeleton Argument.
27. Mr Hardman stated that the Respondent had not paid any service charges.
28. It is the Applicant's case that they have complied with the provisions of the Lease, they have repeatedly put the Respondent on notice of the estimated demands payable in advance. They have provided the Respondent with copies with a summary breakdown of the actual costs payable at the end of the financial year including the proportion payable and the balancing payment.
29. The Applicant has produced an Accountant's certificate for the periods 2006/7, 2009/10 & 2012/13. The Applicant submits that the clear breakdown of the actual sums payable in the other years suggests on a balance of probabilities that the Applicant has complied with the terms of the Lease.
30. The Applicant's completed a Scott Schedule with their comments on the matters raised by the Respondent.

The Respondent's Case

31. The Respondent did not attend the hearing. The Respondent's main issues are detailed in her fax dated 5 February 2015 [128-137]. The outstanding issues can be summarised as follows:
 - (i) Reasonableness of costs incurred for supplying a cleaning service for the periods 2006/7, 2007/08 and 2008/09.
 - (ii) Reasonableness of costs incurred for supplying caretaking services for the periods 2009/10, 2010/11 and 2012/13.

- (iii) Clarification as to what major works had taken place.
 - (iv) Health and safety concerns as well as a complaint that a maintenance person, climbed a ladder to the top of the building in order to replace a clip on a down pipe but did not have the correct clip. In the Respondent's further submissions she produced a copy of a statement as at 26/01/2010 which showed a major works cost dated 26/09/2008 of £1375.84 in respect of which a credit of £879.39 was applied on 17/11/2008 and so the final charge was £496.45. The Respondent claims that this charge was for the broken clip and was only reduced to £496.45 per flat after the leaseholders wrote to the Applicant.
 - (v) The cost of scaffolding and the consequential damage (unspecified) to the Respondent's garden.
 - (vi) The reasonableness of the costs incurred for painting.
 - (vii) General issues with the cyclical decorations proposed at 45-55 Kimberley Drive as detailed in a letter from Mr F Clark to Kathryn Bell the Asset Income & Enquires Team Leader employed by the Applicant. The Respondent produced a copy of an invoice dated 25/09/2008 showing a total Block Cost of £8,097.95 with the leaseholder contribution of 16% being £1,295.67 for pre-decoration repairs and external decorations.
32. The Respondent did not make written submissions in response to the Directions issued following the hearing on the 22 April 2015. The Respondent made further written submissions in response to the second set of Further Directions issued by the Tribunal, however the submissions did not relate to the issue of service charges in relation to this Property.
33. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows:

Major Works

34. The Respondent sought clarification as to what major works had been undertaken. The Applicant at paragraph 7 of witness statement of Sharon Davy confirmed that the claim does not include any amount in

respect of major works [126]. In the copy service charge accounts there was no reference to any charges for major works. Accordingly the Tribunal makes no determination in respect of major works.

Health & safety issue and complaint regarding a clip.

35. The sum of £496.45 did not appear in any of the service charge accounts produced for the years in question. The copy invoice produced by the Respondent described the charge as a major work cost and as the Applicant has confirmed these costs do not form part of the claim, the Tribunal makes no determination in relation to this cost.

Service charge item 4180, amount claimed £79.24 year ended 31st March 2007

36. The Respondent claims that she has lived at the property for the last 30 years and in that time there has never been any cleaning service provided. She accepts that cleaners were appointed in the last 5 years.
37. The Applicant claims that a cleaning service has been provided and it is chargeable under Clause 4 of the Lease. The Applicant claims the charge has been correctly demanded and is reasonable in amount and standard. Ms Davy admitted that they have not been able to produce all the invoices but she stated that a fortnightly cleaning service was provided to the block. There was no detail given as to the type of service or the level of cleaning provided.

The tribunal's decision

38. The tribunal determines that the amount payable in respect of cleaning for the year ending 31st March 2007 is £ 0.00.

Reasons for the tribunal's decision

39. The relevant Accountants Certificate with the notification of the actual charges appears in the bundle [152], there is no charge for a cleaning service. This is consistent with the Respondent's claim that such a service was not provided and so the amount is not allowed.
40. A simple assertion that a cleaning service was provided and it was provided to a reasonable standard is not an adequate rebuttal of the Respondent's claim.

Service charge caretaking charges, amount claimed £82.01 year ended 31st March 2007

41. This charge relates to the caretaking services. The actual charge was £82.01. The actual service charge account has been produced [155].
42. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
43. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking service was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates. The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

44. The tribunal determines that the amount payable in respect of caretaking to for the year ending 31st March 2007 is £82.01.

Reasons for the tribunal's decision

45. The service charge accounts showing the actual costs of the services shows that a sum of £82.01 was incurred for caretaking services. By the Respondent's own admission the caretaking has only stopped in the last 4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease

Maintenance charges, amount claimed £57.54 year ended 31st March 2007

46. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.
47. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

48. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2007 is £57.54.

Reasons for the tribunal's decision

49. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease

Service charge item 4180, amount claimed £79.24 year ended 31st March 2008

50. The Respondent claims that she has lived at the property for the last 30 years and in that time there has never been any cleaning service provided. She accepts that cleaners were appointed in the last 5 years.
51. The Applicant claims that a cleaning service has been provided and it is chargeable under Clause 4 of the Lease. The Applicant claims the charge has been correctly demanded and is reasonable in amount and standard. Ms Davy admitted that they have not been able to produce all the invoices but she stated that a fortnightly cleaning service was provided to the block. There was no detail given as to the type of service or the level of cleaning provided.

The tribunal's decision

52. The tribunal determines that the amount payable in respect of cleaning for the year ending 31st March 2008 is £ 79.24.

Reasons for the tribunal's decision

53. The Applicant has produced an invoice in support of the cleaning charge for this period. [204 – 2008]. 45-55 Kimberley Drive is specifically shown on the breakdown [208]. The property is situated in a block of 6 flats with two flats on each floor and a central staircase. The Respondent did not specifically challenge the reasonableness of the service provided. In addition the Respondent did not produce any quotations showing a cleaning service provided to a comparable property at a lower price. On the basis of the evidence produced the Tribunal finds that a cleaning service was provided, the service was of a reasonable standard and the amount charged is reasonable. The

Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Caretaking Charges, amount claimed £82.01 year ended 31st March 2008

54. This charge relates to the caretaking services. The actual charge was £82.01. The actual service charge account has been produced [238]. The Appellant has not been able to locate the relevant spread sheet for 2007/8.
55. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
56. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates. The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

57. The tribunal determines that the amount payable in respect of caretaking service for the year ending 31st March 2008 is £82.01.

Reasons for the tribunal's decision

58. The service charge accounts showing the actual costs of the services shows that a sum of £82.01 was incurred for caretaking services. The Tribunal accepts that the absence of a spreadsheet does not invalidate the demand, there is a system in place for providing the service and charging for it. By the Respondent's own admission the caretaking has only stopped in the last 4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Maintenance charges, amount claimed £33.08 year ended 31st March 2008

59. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.
60. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

61. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2008 is £33.08.

Reasons for the tribunal's decision

62. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease

Service charge item 4180, amount claimed £70.93 year ended 31st March 2009

63. The Respondent claims that she has lived at the property for the last 30 years and in that time there has never been any cleaning service provided. She accepts that cleaners were appointed in the last 5 years.
64. The Applicant claims that a cleaning service has been provided and it is chargeable under Clause 4 of the Lease. The Applicant claims the charge has been correctly demanded and is reasonable in amount and standard. Ms Davy admitted that they have not been able to produce all the invoices but she stated that a fortnightly cleaning service was provided to the block. There was no detail given as to the type of service or the level of cleaning provided.

The tribunal's decision

65. The tribunal determines that the amount payable in respect of cleaning for the year ending 31st March 2009 is £ 70.93.

Reasons for the tribunal's decision

66. The Applicant has produced the actual Service charge account for this year [157-163] and an invoice in support of the cleaning charge for this period. [209 – 2012]. 45-55 Kimberley Drive is specifically shown on the breakdown [208]. The property is situated in a block of 6 flats with two flats on each floor and a central staircase. The Respondent did not specifically challenge the reasonableness of the service provided. In addition the Respondent did not produce any quotations showing a cleaning service provided to a comparable property at a lower price. On the basis of the evidence produced the Tribunal finds that a cleaning service was provided, the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Service charge item 4960, amount claimed £67.75 year ended 31st March 2009

67. This charge relates to the caretaking services. The estimated charge was £93.50 and the actual charge was £67.75. The actual service charge account has been produced [113].
68. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
69. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates. The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

70. The tribunal determines that the amount payable in respect of caretaking to for the year ending 31st March 2009 is £67.75.

Reasons for the tribunal's decision

71. The service charge accounts showing the actual costs of the services shows that a sum of £67.75 was incurred for caretaking services. By the Respondent's own admission the caretaking has only stopped in the last

4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Maintenance charges, amount claimed £50.72 year ended 31st March 2009

72. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.
73. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

74. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2009 is £50.72.

Reasons for the tribunal's decision

75. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease

Responsive Repairs charges amount claimed £144.22 year ended 31st March 2009

76. The Applicant gave a detailed explanation for this charge and stated it was in respect of repairs due to a leaking roof. The spreadsheet [248-250] details the costs and sets out a summary of the invoices. The Applicant concedes that the Respondent's share should have been £111.12 rather than the £144.22 claimed [281].

The tribunal's decision

77. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2009 is £111.12.

Reasons for the tribunal's decision

78. The Respondent did not raise a specific challenge to the reasonableness of the charge and the Tribunal accepts the explanation given by the Applicant. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Service charge item 4960, amount claimed £64.18 year ended 31st March 2010

79. This charge relates to the caretaking services. The statement of Service charge for the year ending 31 March 2010 shows the Caretaking costs to be £26.90[143].
80. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
81. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates. The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

82. The tribunal determines that the amount payable in respect of caretaking to for the year ending 31st March 2009 is £26.90.

Reasons for the tribunal's decision

83. The statement of service charges shows that a sum of £26.90 was incurred for caretaking services. By the Respondent's own admission the caretaking has only stopped in the last 4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease. There was no evidence of the produced to support the charge of £86.11 originally claimed or the revised sum of £64.18 claimed by the Applicant in its further submissions.

Maintenance charges, amount claimed £65.60 year ended 31st March 2010

84. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.
85. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

86. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2010 is £65.60.

Reasons for the tribunal's decision

87. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease

Service charge item 4960, amount claimed £124.85 year ended 31st March 2011

88. This charge relates to the caretaking services. The estimated charge was £121.58 and the actual charge was £124.85. The actual service charge account has been produced [117]. Mr Hardman in his further submissions dated 28 April 2015 states at paragraph 3(iv) that the spreadsheet calculates the caretaking cost as £103.34.
89. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
90. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates.

The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

91. The tribunal determines that the amount payable in respect of caretaking to for the year ending 31st March 2011 is £103.34.

Reasons for the tribunal's decision

92. The amount claimed was £124.85 but the sum of £103.34 is supported by the Applicant's own spread sheet calculation. By the Respondent's own admission the caretaking has only stopped in the last 4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Responsive Repairs charges amount claimed £352.73 year ended 31st March 2011

93. The Applicant gave a detailed explanation for this charge and stated it was in respect of repairs due to roof repairs, light fittings and asbestos. The spreadsheet [254] details the costs and sets out a summary of the invoices. The largest invoice was capped at £250.00 per leaseholder, the Applicant has provided invoices where possible [255-256]. The sum total of the responsive repairs amounted to £2711.06. The Respondent's share should have been £451.84 instead of the £352.73 claimed.

The tribunal's decision

94. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2011 is £451.84.

Reasons for the tribunal's decision

95. The Respondent did not raise a specific challenge to the reasonableness of the charge and the Tribunal accepts the explanation given by the Applicant. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Maintenance charges, amount claimed £65.14 year ended 31st March 2011

96. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.
97. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

98. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2011 is £65.14.

Reasons for the tribunal's decision

99. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Service charge item 4960, amount claimed £36.42 year ended 31st March 2012

100. This charge relates to the caretaking services. The actual charge was as shown on the actual service charge account was £36.42 [118].
101. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
102. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates. The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

103. The tribunal determines that the amount payable in respect of caretaking to for the year ending 31st March 2009 is £36.41.

Reasons for the tribunal's decision

104. The service charge accounts showing the actual costs of the services shows that a sum of £36.42 was incurred for caretaking services, however the detailed spreadsheets produced by the Applicant with the further submissions show a charge of £36.41 [265].
105. By the Respondent's own admission the caretaking has only stopped in the last 4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Maintenance charges, amount claimed £38.28 year ended 31st March 2012

106. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.
107. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

108. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2012 is £38.28.

Reasons for the tribunal's decision

109. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Service charge item 4982, amount claimed £137.32 year ended 31st March 2013

110. This charge relates to the caretaking services. The estimated charge was £137.32 and the actual charge was the same. The estimated service charge account is produced [119] as is the actual service charge account has been produced [182].
111. The Respondent claims that caretaking services have not been provided for at least 4- 5 years as the care taker moved to another area.
112. The Applicant claims a caretaking service was provided and it is chargeable under the Lease under Clause 5(1)(e) [90]. Mr Hardman stated that the inference from the Respondent's claim is that a caretaking was provided but that it subsequently stopped. The further submissions made on behalf of the Applicant dated 28 April 2015 detail at paragraph 2 the services provided by the caretaker [227]. This explains that the caretaking cost includes salary, overheads for vehicles, supervisor & team leader charges. The caretakers are employed members of staff and are responsible for a designated patch which encompasses a variety of blocks across a number of different estates. The total cost is apportioned to each block depending on the number of properties in the block so a block containing 6 properties has a weighting of 1.33%. The cost per property is then divided according to the lease, in this case the Respondent is liable for 16%.

The tribunal's decision

113. The tribunal determines that the amount payable in respect of caretaking to for the year ending 31st March 2013 is £137.32.

Reasons for the tribunal's decision

114. The service charge accounts showing the actual costs of the services shows that a sum of £137.32 was incurred for caretaking services. By the Respondent's own admission the caretaking has only stopped in the last 4 to 5 years. The Respondent has not stated that the service when it was provided was below standard or that the charge was excessive. The Tribunal finds that a caretaking service was provided the service was of a reasonable standard and the amount charged is reasonable. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

Maintenance charges, amount claimed £56.93 year ended 31st March 2013

115. The Respondent raised an issue generally regarding the maintenance works but did not specify which year this related to or particularise her claim.

116. The Applicant in the further submissions has given a detailed explanation of the charge and how it is calculated [228].

The tribunal's decision

117. The tribunal determines that the amount payable in respect of maintenance to for the year ending 31st March 2013 is £59.93.

Reasons for the tribunal's decision

118. The Respondent did not raise a specific challenge to the reasonableness of the service or of the maintenance charge. The Tribunal was satisfied with the Applicant's explanation of the charge and consider it to be reasonable for there to be charges for the maintenance of a property where it is part of an Estate. The Tribunal finds that the Respondent is liable for this charge under the terms of her Lease.

The next steps

119. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Dartford County Court.

Name: N Haria

Date: 21.12.2015

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period

for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the

tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).